

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

BARNSTABLE SUPERIOR COURT
C.A. No.:WALTER ANDERSON,
Plaintiff

v.

ESSEX PAVILION, LLC
Defendants**COMPLAINT and JURY DEMAND**

NOW, comes the Plaintiff and for his Complaint says, as follows:

1. The Plaintiff is Walter Anderson, an individual, who resides in West Yarmouth, Barnstable County, Massachusetts.
2. The Defendant is Essex Pavilion, LLC, a Massachusetts Limited Liability Company, with a principal place of business located at 876 Falmouth Road, Hyannis, Barnstable County, Massachusetts. The Registered Agent for the LLC is Steven V. Raso of 57 Wingate Street, Haverhill, MA 01852.
3. Plaintiff, through his counsel, previously put the Defendant or its agents on notice of a possible claim, pursuant to M.G.L. ch. 231, §60L, in correspondence dated September 20, 2016, and September 26, 2017. Copies of the same are attached hereto as Exhibit A.
4. On or about December 18, 2015, Plaintiff entered into a Health Care Center Admission Agreement with The Pavilion, 876 Falmouth Road, Hyannis, MA for VA Respite Care while his daughter was traveling during the holidays.

5. On or about December 27, 2015, the Plaintiff, while a patient of the Defendant at 876 Falmouth Road, Hyannis, Barnstable County, Massachusetts, suffered personal injuries to his left ankle/foot as a result of the carelessness and negligence of the Defendant, their agents, servants and/or employees.
6. As a direct and proximate result of the negligence of the Defendant, as set forth above, the Plaintiff was caused to suffer personal injuries, was caused to experience pain and suffering, was caused to incur expenses for her medical care and treatment, was permanently injured/disfigured, and was otherwise harmed and damaged.

WHEREFORE, Plaintiff, Walter Anderson, demands judgment in her favor and against the Defendant, Essex Pavilion, LLC, in an amount to be determined by the Court, together with costs, interest and such other relief as the Court deems fair and reasonable.

JURY DEMAND

The Plaintiff hereby demands a Trial by Jury as to all issues so triable herein.

Respectfully submitted
PLAINTIFF, WALTER ANDERSON
By Counsel,

/s/John C. Manoog, III
/s/Linda M. Slowe, Esq.
John C. Manoog, III, BBO#567481
Linda M. Slowe, Esq. BBO# 565033
Law Offices of John C. Manoog, III
450 South Street
Hyannis, MA 02601
508-775-0088

EXHIBIT A

THE LAW OFFICES
of
JOHN C. MANOOG III

Hyannis Office
450 South Street
Hyannis, MA 02601
Phone: (508) 775-0088
Fax: (508) 775-0176

Please direct all correspondence to the Hyannis office.

Plymouth Office
4 Court Street, Suite 212
Plymouth, MA 02360
Phone: (508) 747-9888
Fax: (508) 746-0668

September 20, 2016

Pavilion
876 Falmouth Rd
Hyannis, MA 02601
Attn: Management Department

RE: Our Client: Walter Anderson
Date of Loss: December 27, 2015

Dear Sir or Madam:

Please be advised that this office is counsel to Walter Anderson with respect to his claims for personal injuries sustained while an in-patient at Pavilion on December 27, 2015. As a result, Mr. Anderson has been required to undergo substantial medical treatment.

Please forward a copy of this letter to your liability insurance carrier immediately upon receipt.

If you have any questions or need any further information, please do not hesitate to contact me. Thank you for your assistance in this matter.

Sincerely,



John C. Manoog III

JCM/kbw

THE LAW OFFICES
of
JOHN C. MANOOG III

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September 26, 2017

Via email: robert_parks@westernlitigation.com

Mr. Robert S. Parks
Western Litigation
1900 West Loop Street, Suite 1500
Houston, TX 77027

RE:	Our Client:	Walter Anderson
	Your Insured:	Essex Pavilion, LLC c/o Landmark Health Solutions
	WLI Claim No:	LTTS-LHS-15-PL-350843
	Torus File No:	100-53-922
	Date of Injury:	December 27, 2015

Dear Mr. Parks:

As you are aware, this office represents Walter Anderson with respect to his claims for injuries sustained as a result of negligent care by your insured, Essex Pavilion, LLC, on or about December 27, 2015. Please take this letter as my client, Walter Anderson's, formal demand for settlement pursuant to M.G.L. c.231 §60L. I have enclosed copies of Mr. Anderson's medical records and bills for your reference.

Summary of Facts:

On or about December 27, 2015, Mr. Anderson was staying at Essex Pavilion under the respite program. During the course of his stay, Mr. Anderson required assistance to ambulate to the bathroom and was instructed to use the assistance button to summon help. On one occasion, Mr. Anderson pressed the assistance button several times waiting for help to get to the bathroom. After about 20 minutes, Mr. Anderson could not wait any longer and unassisted, got out of bed and went into the bathroom. As a result, Mr. Anderson sustained an injury to his left foot/ankle. Mr. Anderson has undergone extensive medical treatment, incurred medical expenses and experienced pain, suffering, and disability as a result of this injury.

As a result of your insured's negligence and improper care, Mr. Anderson suffered personal injuries.

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Summary of Medical Treatment

By way of background, at the time of his injury, Mr. Anderson was 89 years old and lived in his own home with his daughter. When his daughter planned to travel over the holidays, arrangements were made for a short-term respite stay for Mr. Anderson at The Pavilion in Hyannis, Massachusetts. During Mr. Anderson's intake at The Pavilion, it was noted that Mr. Anderson required assistance with ambulating. Mr. Anderson was instructed to use the assistance button whenever he needed to get out of bed and wait for staff to respond to his needs.

As instructed, Mr. Anderson used the assistance button whenever he needed to get out of bed, most often to use the bathroom. On one occasion when Mr. Anderson pressed the assistance button, help did not arrive in time and Mr. Anderson soiled himself, which was quite embarrassing for Mr. Anderson. On another occasion, Mr. Anderson repeatedly pressed the assistance button and help did not arrive. Since Mr. Anderson urgently needed to use the restroom, he got out of bed and using his walker, ambulated into the bathroom. Unfortunately, Mr. Anderson injured his left ankle and reported he could not move his left foot.

On December 27, 2015, Mr. Anderson was brought by ambulance to the emergency room at Cape Cod Hospital for left ankle pain. Mr. Anderson presented with left ankle deformity, decreased range of motion, and inability to bear weight. After a thorough examination by attending physician, Peter Pillitteri, MD, Mr. Anderson underwent left ankle, left foot, tibia and fibula x-rays. Ankle x-rays suggest widening of the mortise joint medially. Dr. Pillitteri requested an orthopedics consult with Dr. Smith and reviewed the x-ray findings. Mr. Anderson was diagnosed with left ankle subluxation inversion injury and left ankle tendon rupture. An ankle stirrup and air cast was applied. Mr. Anderson was instructed to follow up with his primary care physician and with Dr. Smith for continued orthopedic care.

Mr. Anderson went to Cape Cod Orthopaedics on December 29, 2015, as instructed for a follow-up appointment. He was seen by Nurse Practitioner Daniel Chapin and Dr. Smith and underwent a thorough examination and updated left ankle/foot x-rays. Dr. Smith noted that Mr. Anderson had subtalar instability, as was noted in his previous ER x-rays. The doctor advised Mr. Anderson on a further orthopedic consultation with Dr. Boyle for surgical treatment evaluation.

When Mr. Anderson was discharged to home from Pavilion, on January 5, 2016, the social worker noted that Mr. Anderson would require in-home care. A referral was made to VNA of Cape Cod for skilled nursing, physical therapy, occupational therapy, and home health aide services.

On January 6, 2016, the VNA conducted a home assessment. It was noted that Mr. Anderson had impaired balance, was non-weight bearing, and could not ambulate without assistance. Mr. Anderson was home bound and could only leave his home for medical appointments. A plan

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of care was developed for Mr. Anderson which was to include fall prevention, safety precautions, bed mobility, transfer training, gait training, therapeutic exercises, physical therapy, occupational therapy, adaptive equipment training, at-home exercise program, and patient/family education. Mr. Anderson continued to receive in-home care until he was discharged from VNA services of May 4, 2016.

On January 8, 2016, Mr. Anderson went to Emerald Physicians and met with his primary care doctor, Peter Crosson, MD. Mr. Anderson's daughter also noted that Mr. Anderson had developed a productive cough during his stay at The Pavilion. The doctor noted that Mr. Anderson required skilled nursing and VNA home care services were necessary. Upon examination, Dr. Crosson noted that Mr. Anderson had a left ankle injury and was being followed by orthopaedics. Mr. Anderson was instructed to return for a follow-up appointment, after his orthopaedic visit, in about three weeks. Mr. Anderson was advised to use a humidifier and nasal saline for his cough.

Mr. Anderson met with Dr. James Boyle on January 14, 2016, for an initial consultation. It was noted that Mr. Anderson continued to have pain, significant weakness, and remained unable to ambulate since his injury occurred. Upon examination, Dr. Boyle noted his ankle remained inverted, weak and unstable. His most recent x-rays findings were very limited and Dr. Boyle ordered an MRI for further evaluation. Mr. Anderson was instructed to return after completion of his MRI.

On January 20, 2016, Mr. Anderson returned to see his primary care physician for a follow-up visit. Mr. Anderson continued to complain of left foot pain and chest pain with breathing. Upon examination, Dr. Crosson noted that Mr. Anderson had an inflammation of the lung lining and his elevated white blood count suggested viral pleurisy. Mr. Anderson was instructed to continue with Prednisone and to return in two weeks for a follow up re-evaluation. Dr. Crosson noted that Mr. Anderson continued to be followed by Dr. Boyle for his ankle injury and was waiting for his MRI results. Mr. Anderson continued to follow up with his primary care physician on a regular basis.

On January 23, 2016, Mr. Anderson presented to Shields MRI for a left lower extremity MRI as ordered by Dr. Boyle. Findings showed peroneus tendon partial tearing was seen anterior to the lateral malleolus. Diffuse fatty atrophic changes of intrinsic musculature of the hindfoot and midfoot were seen, neurologic related or disuse related. Some mild arthritic change was seen affecting the talocalcaneal joint, affecting some intertarsal joints as well. Posterior plantar fascia medial cord demonstrated some fullness, and irregularity suggesting previous plantar fasciitis and possibly healed partial tear injuries, without focal nodular mass noted. Some adjacent edema could indicate a degree of plantar fasciitis was currently present.

Mr. Anderson returned to see Dr. Boyle at Cape Cod Orthopaedics on February 9, 2016. After a review of his MRI, Dr. Boyle diagnosed left subtalar joint instability and peroneal tendon rupture.

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The doctor informed Mr. Anderson that surgical intervention was not recommended. The doctor recommended discontinuing his boot and transitioning into LUAB. Dr. Boyle informed Mr. Anderson that he would likely need a brace on his ankle for the rest of his life. Mr. Anderson was instructed to return in two months for clinical re-evaluation and new x-rays.

On March 16, 2016, Mr. Anderson saw Dr. Crosson for a follow-up visit. Mr. Anderson complained of ongoing left foot pain and throbbing. Mr. Anderson underwent a thorough examination and Dr. Crosson prescribed Vicodin for his left foot pain. The doctor ordered a chest CT as a follow up to Mr. Anderson's pleural scarring.

On April 27, 2016, Mr. Anderson returned to see Dr. Boyle for a follow-up visit. The doctor noted that Mr. Anderson seemed to have less control of his right foot. Mr. Anderson's daughter, who often accompanied Mr. Anderson on his appointments, noted that it had worsened since his last visit. Dr. Boyle noted that Mr. Anderson was non-weight bearing and used a wheelchair for ambulation. Dr. Boyle diagnosed foot drop and planned to contact Mr. Anderson's primary care doctor to discuss. The doctor ordered a custom AFO foot brace and advised Mr. Anderson to return in two months for a re-evaluation.

On May 6, 2016, Mr. Anderson presented to The Orthotic & Prosthetic Centers for an initial evaluation. Mr. Anderson was seen by Katie Bisutti, CO, Prosthetic Resident. After a thorough examination Ms. Bisutti noted Mr. Anderson had left foot drop with muscular weakness and a flexible equinus foot positioning. Overall design, goal, and function of the brace were discussed. Mr. Anderson was to receive a custom fabricated left molded articulating lace and velcro AFO with plantar flexion stop. Mr. Anderson was advised that he would need to return for a fitting once the custom fabrication was completed.

Mr. Anderson returned to see Dr. Boyle on September 20, 2016, for ongoing left ankle instability and foot drop. The doctor noted that his custom AFO had positive results, even though his daughter was still worried about worsening weakness. After a thorough examination, Dr. Boyle noted that Mr. Anderson was scheduled for ultrasound of right leg aneurysm. The doctor recommended starting physical therapy after completing treatment on his right leg. Mr. Anderson was advised to follow up in three months.

On Mr. Anderson's follow-up visit with Dr. Boyle on November 9, 2016, he complained of ankle discomfort. The doctor noted that his AFO had irritated the medial malleolus and saphenous vein. Dr. Boyle arranged for re-evaluation and possible adjustments for Mr. Anderson's custom brace. He also recommended that Mr. Anderson begin physical therapy. Dr. Boyle informed Mr. Anderson and his daughter that bracing and physical therapy were the only options available to Mr. Anderson.

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At this time, it appears that Mr. Anderson has reached maximum medical improvement. To date, his medical expenses are as follows:

Summary of Medical Expenses:

Provider:

Charge:

Cape Cod ER Physicians (12/27/15)	\$ 682.00
Cape Cod Hospital (12/27/15)	\$ 1,951.73
Shields MRI (01/23/16)	\$ 1,900.00
The Pavilion (12/18/15-01/05/16)	\$ 4,657.54
Cape Cod Orthopedics (12/29/15-11/09/16)	\$ 2,533.00
Emerald Physician Services (01/08/16-04/13/16)	\$ 1,410.00
VNA of Cape Cod (01/06/16-05/04/16)	\$11,200.02
Partners Healthcare-Radiology (12/27/15)	\$ 97.00
COMM Fire Department (12/27/15)	\$ 1,011.80
Coastal Medical Transport (01/20/16-05/08/17)	\$ 1,144.50
Total	\$26,587.59

In addition to his medical treatment and expenses, Mr. Anderson experienced additional losses as a result of this accident. Since his discharge from Pavilion, Mr. Anderson has had ongoing issues with his left foot. Mr. Anderson's pain and discomfort made ambulating very difficult. Mr. Anderson spent much time in a wheelchair and could only ambulate very short distances within his home. Mr. Anderson was fitted for a custom brace that he will need for the rest of his life. Unfortunately, this brace also caused Mr. Anderson much discomfort and popliteal vein issues. Mr. Anderson is greatly saddened by the impact this accident continues to have on his life.

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His daughter has had to deal with rearranging furniture and changing the whole house dynamic to allow her father to ambulate safely, minimize fall hazards, and to live as comfortably as possible in his own home. His daughter has had to range very costly wheelchair transportation for her father's many doctors' appointments.

Based on Mr. Anderson's personal injuries, pain and suffering, his medical treatment and expenses, continuing pain and ongoing medical needs, I hereby demand the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), on behalf of Mr. Anderson.

Please contact me once you have had an opportunity to review the enclosed. In any event, please contact me within seven (7) days of receipt of this letter so that we may further discuss Mr. Anderson's claim.

Thank you for your anticipated cooperation in this matter. I look forward to speaking with you soon.

Sincerely,


John C. Manoog, III

JCM/sbr

Enclosures as stated, via email pdf's.

**CIVIL ACTION COVER SHEET**

DOCKET NUMBER

**Trial Court of Massachusetts
The Superior Court**

PLAINTIFF:

Walter Anderson

ADDRESS:

2 Elizabeth Lane

West Yarmouth, MA 02673

COUNTY

Barnstable

DEFENDANT(S):

Essex Pwason, LLC

ATTORNEY:

Linda M. Skene, Esq.

ADDRESS:

450 South Street, Hyannis, MA 02601

ADDRESS:

876 Falmouth Road, Hyannis, MA 02601

BRO:

560933

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.

B08

TYPE OF ACTION (specify)

Malpractice-Medical/Wrongful Death

TRACK

A

HAS A JURY CLAIM BEEN MADE?

☒ YES☐ NO

If "Other" please describe:

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or triple damage claims; indicate single damages only.

TORT CLAIMS

(attach additional sheets as necessary)

A. Documented medical expenses to date:

1. Total hospital expenses	\$ 1,991.73
2. Total doctor expenses	\$ 4,625.00
3. Total chiropractic expenses	\$ n/a
4. Total physical therapy expenses	\$ n/a
5. Total other expenses (describe below)	\$ 20,010.88

Ambulance, visiting nurses, radiology

Subtotal (A): \$ 26,587.59

B. Documented lost wages and compensation to date

C. Documented property damages to date

D. Reasonably anticipated future medical and hospital expenses

E. Reasonably anticipated lost wages

F. Other documented items of damages (describe below)

G. Briefly describe plaintiff's injury, including the nature and extent of injury.

Left foot left ankle injury

TOTAL (A-F): \$ 26,587.59

CONTRACT CLAIMS

(attach additional sheets as necessary)

Provide a detailed description of claim(s):

n/a

TOTAL: \$ n/a

Signature of Attorney/Pro Se Plaintiff: X

Date: Dec 21, 2018

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Date: Dec 21, 2018



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